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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1944

No. 714

MACCLENNY TURPENTINE COMPANY, A FLORIDA CORPORATION, ET AL.,

Petitioners,

vs.

BALDWIN DRAINAGE DISTRICT, A PUBLIC CORPORATION, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA AND BRIEF IN SUPPORT THEREOF.

THOS. B. ADAMS,
Counsel for Petitioners.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

To the Honorable, the Supreme Court of the United States:

Macclenny Turpentine Company, a Florida corporation, Ferndale Groves Company, a Florida corporation, Baldwin Realty Investments, Inc., a Florida corporation, B. J. Padgett, Eleanor B. Pratt and Clement A. Pratt, her husband, Elizabeth C. Pace, individually and as Executrix of the Estate of Charles F. Pace, deceased, Nellie C. Bostwick, Mrs. A. K. Fouraker, Emma F. Stokes and F. M. Stokes, her husband, Respondents, before the Supreme Court of Florida and Plaintiffs in the court below, respectfully petitioning, show unto the court:

Summary Statement of Matters Involved

The Petitioners, as property owners and as lienors, severally, by their Amended Bill (R. 7 to 85) sought can-

cellation and injunction with respect to past and future Drainage District taxes levied for debt service purposes and maintenance purposes. (See 15th and 16th prayers of the Bill, R. 78.)

The Respondents, Baldwin Drainage District, its supervisors and bondholders, attacked the bill by a general motion to dismiss (R. 95) and by motions to strike (R. 91) sundry parts of the bill.

The Chancellor by his order of April 3, 1943 (R. 98) denied the general motion to dismiss but granted the motion to strike in part and denied the motion to strike in part.

Thereupon, the Respondents petitioned the Supreme Court of Florida for a writ of certiorari (R. 100) to review the Chancellor's order. The Petitioners here presented a cross-petition (R. 107) to review that part of the order adverse to them.

The majority opinion of the Supreme Court of Florida (R. 113 to 120) 18 So. (2d) text 793, held, first, that State tax deed title owners were in no better position to make attack than were owners who had derived title from parties who were owners when the District was formed. In what was called the "second phase of this attack" the majority opinion, 18 So. (2d) text 794, listed thirteen points as constituting what was involved. This listing did not recognize that any Federal question was presented by the bill. Following such listing of points the majority opinion, 18 So. (2d) 795, first column, said:

> "Reduced to a simple statement, the bill constituted an assault in 1943 against the drainage district incorporated under general law in 1916 * * * the vital point in the controversy is whether the whole bill should not have been dismissed upon motion on the ground of estoppel by acquiescence."

The majority opinion supporting the sixth headnote, 18 So. (2d) text 796, states the gist of the decision which

s that on account of conduct and acquiescence *presumed have existed* on the part of former owners, all of the ıintiffs, Petitioners here, were precluded from being ırd on any of the thirteen points previously listed. The jority opinion concluded, 18 So. (2d) text 796, with this ıguage:

> "For the reasons which we have pointed out we conclude that the motion to dismiss should have been granted because of the extensive period of time which elapsed between the formation of the district and the filing of the bill in this case, which clearly establishes, in our opinion, acquiescence on the part of those who could have protested."

ereupon, the court ordered the Chancellor to dismiss the l. The judgment of the Supreme Court of Florida in that ıalf appears R. 132. That judgment is final for purposes this petition.

The dissenting opinion delivered by Mr. Justice Chapman . 121 to 132), 18 So. (2d) 796 to 802, analyzed the bill an entirely different basis from that found in the jority opinion and recognized the presence of Federal estions presented thereby. For instance, at R. 129 and 18 So. (2d) text 801, bottom first column, Mr. Justice apman said:

> "In the amended bill of complaint, by appropriate allegations, it has been made to appear that described property of the named plaintiffs is being taken without due process of law and the equal protection of the law and they are being deprived of rights vouchsafed by the State and Federal Constitutions."

the next column, on the same page, he further says:

> "The amended bill seeks a cancellation of the special assessments that have been levied against the described lands of the plaintiffs from year to year up to the time of filing suit and to restrain a continuation of these

levies. It is alleged that the effect of these levies is to take the property of the plaintiffs without due process of law and is a denial of the equal protection of the law because the assessments are grossly in excess of the benefits; that the assessments cannot and have not enhanced the value of plaintiffs' lands; that the drainage of the district was not completed but abandoned as to some of the described lands; and as an example it is also alleged that Sections 4, 5 and 6 of Tp. 2, So., R. 23 E., according to the reclamation plans, were to be ditched at an estimated cost of $554.40 per section and the ditches were never cut but assessment benefits against each of the sections were entered for more than $20,000 per section and plaintiffs' property is being taken or sold to satisfy or pay these alleged grossly excessive assessments on lands possessing a value of approximately $5 per acre."

"Counsel for petitioners admit, for the purpose of a ruling on the demurrer, these well-pleaded facts, * * *."

It is true that many of the attacks on the Drainage District taxes were based upon State law such as, for example, the three-year statute of limitations pleaded in Section III of the bill (R. 9); also the insufficiency of the original decree purporting to create the district as pleaded in Section V of the bill (R. 18); also the insufficiency of the notice to confirm assessments of benefits, as complained of in Section VII of the bill (R. 29). We cited in the bill and in the briefs to the Supreme Court of Florida many decisions of the Supreme Court of Missouri to the effect that the decree and the notice were jurisdictional in character and were ineffective to include Plaintiffs' lands within the District. The Florida drainage law was largely copied from the Missouri Statute of 1913. The majority opinion, however, precluded any consideration of those State statutory questions on the grounds of supposed acquiescence on the

part of former owners. We shall assume for the purposes of this petition that such non-Federal ground of decision was adequate to dispose of the attacks based upon State statutory law, but we shall not concede that such non-Federal ground of decision was adequate to dispose of the attacks based upon organic rights secured by the Fourteenth Amendment, especially since the majority opinion did not recognize that the bill asserted such organic rights.

Important Federal questions were presented by the bill, Section II, R. 3, Section VI, R. 24, Section VIII, R. 33, Section XII, R. 54, Section XIII, R. 59, Section XIV, R. 64, and Section XV, R. 69.

The Federal questions presented by the cited sections of the bill and based upon the negative decision of the Supreme Court of Florida will be analyzed and pointed out under the heading QUESTIONS PRESENTED hereinafter set forth.

Concluding this summary statement of matters involved, we contend that the non-Federal ground of "acquiescence on the part of those who could have protested" resorted to by the majority opinion of the Supreme Court of Florida was without "fair and substantial support" as applied to any of the Federal questions asserted by the petitioners in their bill.

> *Myles Salt Co.* v. *Board of Commissioners,* 239 U. S. 478; *Lawrence* v. *State Tax Commission,* 286 U. S. 276; *Ocean Beach Heights v. Brown Crummer Inv. Co.,* 302 U. S. 614; *Ancient E. A. O.* v. *Michaux,* 279 U. S. 737, 745.

We contend further that when the averments of the bill were admitted by the attacking motions there was no basis left by presumption or otherwise that the Petitioners lost their "fundamental rights" asserted in the bill, by waiver

or acquiescence. *Ohio Bell Tel. Co.* v. *Public Utilities Commission*, 301 U. S. 292, 307, 81 L. Ed. 1093, 1103, opinion by Mr. Justice Cardozo. *Johnson* v. *Zerbst*, 304 U. S. 458, 464, 82 L. Ed. 1461, 1466, opinion by Mr. Justice Black.

Basis of Jurisdiction

The jurisdiction of this Court is invoked under Section 237 Judicial Code, as amended by Act February 13, 1925, now 28 U. S. C. A., Section 344. The opinion (R. 120) and judgment (R. 132) of the Supreme Court of Florida directing the Chancellor to dismiss the bill of complaint and dated April 4, 1944, were final in character. Petition for rehearing (R. 133) was filed April 17, 1944, and by order of the Supreme Court of Florida dated May 17, 1944 (R. 150), was granted in part and later, on to-wit, August 1, 1944, denied. (See order of denial R. 150). Thereafter, on to-wit, August 8, 1944, the Petitioners filed in the Supreme Court of Florida a motion for leave to file an extraordinary petition for rehearing (R. 152). Said last mentioned petition was, on September 15, 1944, denied by order of the Supreme Court of Florida (R. 154). On the 27th day of October, 1944, Petitioners filed in this Court a petition for extension of time within which to file petition for writ of certiorari and supporting brief, and on October 27, 1944, Mr. Justice Black made an order granting said last mentioned petition and extended the time for filing this petition for writ of certiorari to and including December 1, 1944.

Questions Presented

Upon the record and the opinions of the Supreme Court of Florida, as above explained, several important Federal questions are presented as follows:

1. WHEN THE SUPREME COURT OF FLORIDA SO CONSTRUED AND APPLIED THE GENERAL DRAINAGE STATUTE OF FLORIDA AS TO PUT STATE TAX TITLE GRANTEES AND STATE TAX CERTIFICATE OWNERS IN PRIVITY WITH FORMER OWNERS, MAKING SUCH PRESENT OWNERS SUBJECT TO WAIVER AND ACQUIESCENCE THAT MAY HAVE EXISTED AS AGAINST SUCH FORMER OWNERS, DID THE COURT CAUSE THE DRAINAGE LAW TO IMPAIR THE OBLIGATIONS OF THE TAX DEED GRANTS CONTRARY TO THE CONTRACT CLAUSE OF THE FEDERAL CONSTITUTION AND DID SUCH DEPARTURE FROM PRIOR OPINIONS OF THE SUPREME COURT OF FLORIDA ON THAT SUBJECT OPERATE TO TAKE THE PROPERTIES OF THE TAX TITLE PETITIONERS WITHOUT DUE PROCESS OF LAW AND WITHOUT EQUAL PROTECTION OF THE LAWS CONTRARY TO THE FOURTEENTH AMENDMENT?

Section II of the bill as amended (R. 3) sets up what properties were acquired by several of the Petitioners through State tax deeds and that such deeds were issued after advertisement made to the highest bidders in 1927, 1928, 1929, 1930 and 1937—ten, fifteen and twenty years after the district was organized. It is further alleged (R. 6) that said tax deeds were based upon tax certificates issued for general State, county, school and road purposes; also that when each of the bond issues of the district was put out the law then in force made such general taxes paramount to all Drainage District taxes and, consequently, any enlargement of drainage taxes to a parity with general taxes by virtue of an Act of 1927, or otherwise, was a mere gratuity for such bonds. Finally, it is alleged (R. 8):

> "That in any event the grantees of said tax deeds through whom these plaintiffs now claim as aforesaid

> received independent titles from the State to the lands described in said tax deeds severally, wholly unaffected by anything done or omitted to be done by any of the former owners of said lands. That * * * Macclenny Turpentine Company and Nellie C. Bostwick claiming through said tax deeds in manner aforesaid, are entirely free and have the clear legal right to attack the validity of all such drainage taxes upon all the grounds hereinafter set forth in this amended bill."

These claims of new and independent titles were based upon prior decisions of the Supreme Court of Florida such as *Stuart* v. *Stephanus*, 94 Fla. 1087, 114 So. 767, decided December 1927, and *Dean* v. *Kane*, 106 Fla. 814, 143 So. 656—second headnote. In *Stuart* v. *Stephanus* the Court, among other things, said:

> "If the tax deed is valid, the former title can neither assist nor prejudice the tax title. The tax grantee takes a complete and perfect title by another right, by a new, independent, and paramount grant."

The Court then cited prior decisions of the Supreme Court of Florida and also two decision of this Court, namely, *Hefner* v. *Northwestern Mutual Life Ins. Co.*, 123 U. S. 747, and *Hussman* v. *Durham*, 165 U. S. 148. The *Hefner* case and the *Hussman* case were both Iowa cases. The Supreme Court of Florida, nevertheless, accepted both decisions construing the Iowa law as applicable in Florida, and the above quotation from *Stuart* v. *Stephanus* is substantially as this Court said in the *Hefner* case. In *Hussman* v. *Durham*, also accepted by the Supreme Court of Florida, this Court said:

> "* * * under such a tax law as exists in Iowa there is no privity between the holder of the fee and one who claims a tax title upon the land. The latter title is not derived from but in antagonism to the former. The holder of the latter is not a privy in estate with

the holder of the former. Neither owes any duty to the other, nor is estopped from making any claim as against the other."

The majority opinion of the Supreme Court of Florida in this case departs from these accepted rules of law and now comes to the rescue of the Baldwin Drainage District and its bondholders by asserting a contrary rule of privity which operates to impair the rights and obligations which these Petitioners thought they had acquired pursuant to said prior decisions of the Florida Supreme Court and of this Court. *Louisiana* v. *Pillsbury*, 105 U. S., 278, 295, 26 L. Ed. 1090, 1096; *Anderson* v. *Santa Anna Township*, 116 U. S. 356, 361-362, 29 L. Ed. 633, 635. The doctrine of new and independent titles presumably still holds good in Florida as against all parties save Drainage Districts and bondholders of Drainage Districts. If so, we have one rule established by this case to protect Drainage Districts but an entirely different rule applicable to tax titles as against all other parties. Therefore, the effect of the decision of the Supreme Court of Florida on this question is to deprive these petitioning tax title owners of their properties without due process of law and without equal protection of the laws.

2. Did the supreme court of florida deprive petitioners of a fair hearing contrary to the due process clause of the fourteenth amendment when the court disregarded allegations of the bill admitted by the attacking motions and based its decision on vague assumptions as to what had been the conduct of prior owners?

The majority opinion of the Supreme Court of Florida, supporting the sixth headnote—18 So. (2d) text 796, shows that the Court assumed as true an objection stated in one of the attacking motions, namely, that no former owner

had voiced any objection to the organization of the District, the assessment of benefits, the levy of taxes or any of the acts now challenged or that any of their successors had protested until the filing of the present bill. The Court then announced that the position of the movants was sound. The next paragraph begins with the word "Evidently." In the same paragraph we find the sentence

> "It is fair to presume that their predecessors in title, the persons owning the lands from the time the District was created until these moneys were expended, did not contest formation of the District."

The next sentence begins with the word "Doubtless" and in the second column of the same page the language is

> "It would be futile here to detail the many opportunities given any disgruntled land owners to contest."

By this course of reasoning, the Supreme Court of Florida, in effect, based its decision upon pure conjecture as to what had been the conduct of former owners. We need call attention to only one section of the bill to demonstrate that the Court disregarded what was alleged in the bill and admitted by attacking motions. That section is Section XIV, beginning R. 64. The first thing alleged in that section is that as early as October 7, 1918, Saucer & Company, through which Macclenny Turpentine Company claims title to Sections 6, 7 and 30, complained that drainage work up to that time constructed had created flood conditions causing injury without any benefits and, thereupon, the Board of Supervisors passed a resolution recognizing the justness of the complaint and eliminating Section 6 altogether from drainage taxes. That is only one of the Examples of protest set forth in Section XIV of the bill. The bill further shows that the District from that time up to

the time this suit was filed took no steps within twelve months, or at any other time, to bring any suit to enforce annual levies of assessments for debt service and maintenance which it continued to make against Section 6 and other lands contrary to the resolution of the Supervisors. Having made the protest and the Supervisors having passed such a resolution and the District having done nothing to enforce taxes for about twenty-five years, the property owners were justified in assuming that the District would never undertake to enforce taxes against areas damaged by flooding or against areas where there had been complate abandonment, as exemplified by Exhibits 8, 9 and 10 of the bill. To arrive at a judicial opinion by such assumptions and conjecture outside of the record and contrary to the record clearly constitutes depriving these suitors of their property without due process of law contrary to the Fourteenth Amendment. This Court so held in respect to rules and decisions by the Ohio Public Utilities Commission in the case of *Ohio Bell Tel. Co.* v. *Public Utilities Commission,* 301 U. S. 302, 306, 307, 81 L. Ed. 1093, 1102-1103.

In the case of *Johnson* v. *Zerbst,* 304 U. S. 458, 82 L. Ed. 1461, this Court held, as stated in the first and second headnotes, as follows:

> "1. Courts indulge every reasonable presumption against a waiver of fundamental constitutional rights, and do not presume acquiscence in their loss."
>
> "2. A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege."

The Supreme Court of Florida disregarded this rule also. Moreover, as we shall point out in connection with the averments contained in Sections VIII, XII and XIII of the bill, former property owners never had any notice and there was never any hearing and there was never any

opportunity to be heard with respect to the changes which the Supervisors undertook to make in the original decree creating the District and the changes which they undertook to make with reference to the plan of reclamation, as evidenced by Exhibits 8, 9 and 10 to the bill. On the contrary, the Supervisors carefully refrained from filing any petition with the Court, from giving any notice of such changes, from calling for the appointment of any Commissioners to make reassessments of benefits, and from publishing any notice to confirm any reassessment of benefits. All the allegations of those three paragraphs of the bill, which were admitted by the attacking motions, show the absence of such hearing and the absence of any opportunity to object and yet the Supreme Court of Florida, basing its decision upon conjecture, concludes that former owners should have objected and that all of the present Petitioners, including the tax title owners, are bound by the failure of such former owners to object. So it is that the majority opinion of the Supreme Court of Florida, in effect, deprived the Petitioners of the very fundamentals of due process.

3. DID CHAPTER 6458, LAWS OF FLORIDA 1913, VIOLATE THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT, WHEN SO CONSTRUED AND APPLIED AS TO INCLUDE WITHIN A SINGLE DRAINAGE DISTRICT FOUR SEPARATE, DISTINCT AND UNRELATED WATERSHEDS, AND WHEN THEREAFTER SO APPLIED AS TO SPREAD COMMON BURDENS ON THE LANDS IN THE WESTERN WATERSHED OF THE DISTRICT FOR MONEY SPENT OR WASTED IN OTHER WATERSHEDS WHOLLY WITHOUT BENEFIT TO THE LANDS IN THE WESTERN WATERSHED?

This question is predicated upon the rule stated in *N. C. & St. L. R. Co.* v. *Walters*, 294 U. S. 405, 415, 79 L. Ed. 949, 955:

> "A statute valid as to one set of facts may be invalid as to another."

Section VI of the bill lays ample predicate for the question last above stated. That section shows how the lands of the Petitioners are all situated in the Western watershed of this Drainage District and that the District as a whole contains four separate, distinct and unrelated watersheds. It is pointed out that this fact appeared upon the face of the reports made by the Engineer to the Supervisors and by their report, in turn, made to the Court at the time the decree confirming assessments of benefits was made. It is also shown that the same fact of four separate and distinct watersheds appeared from Federal topography maps in existence and available. It is charged in the outset of the section (R. 24), that the Circuit Court of Duval County had

> "no jurisdiction or power either under the State Drainage Law of 1913 or under the State or Federal Constitutions to enter said decree of January 19, 1916, including the lands of these respondents (Petitioners here) in a single drainage district * * *".

It is next charged (R. 24) that the lands existing in the four distinct watersheds were wholly separate and apart from each other to such an extent

> "that it required at least four systems of drainage to effectuate any sufficient drainage of the lands situated in said several watersheds."

Also, (R. 24-25)

> "That the lands in said several watersheds were wholly unconnected and unrelated to each other so much so that the lands in one of said watersheds had no common interest with lands in another watershed * * * That expenditures however large or great for a drainage system in one of said watersheds could not be and were not of any benefit to lands in any other of said four watersheds, all with the result that the lands included within the boundaries of said purported District and lying in said several watersheds

> were non-contiguous in physical conditions, non-contiguous as to flow of water and outlets, non-continguous as to interests and non-continguous as to plans of drainage or improvements which might have been proposed or provided for the improvement and reclamation of the lands situated in said watersheds severally."

It is further pointed out from the Engineer's report made part of the record in the proceedings wherein the decree purporting to create the District was entered, that the Engineer reported regarding the watershed in Township 2 South, Range 23 East (see R. 26) that

> "the general shed of the water from this Township is to the north and northwest. There is a fairly well defined though small uplift approximately on the east line of the Township."

In the same section of the bill, it is further shown that the Florida statute was copied largely from the Missouri Drainage and Levee Law which sought a remedy against *water as a common enemy from a common source,* and that where such conditions existed a *common burden is justified.* Section VI of the bill then specifically charges (R. 27):

> "These plaintiffs further say that they are advised and believe and so allege that if said General Drainage Law be construed as warranting or authorizing the inclusion of such four separate and distinct watersheds wholly unrelated in interests in the various ways aforesaid, necessitating imposing upon all the lands in such an area common burdens for whatever improvements might be made in any part of such an area, then said Statute and all provisions thereof undertaking to vest such authority were void because contrary to the due process and equal protection clauses of Section 12 of the State Bill of Rights and in violation of the due process and equal protection clauses of the 14th Amendment to the Federal Constitution."

That section then further alleges that in the subsequent history of the district large sums of money were wasted or spent on projects in other watersheds of the district which were of no possible benefit to the lands of the Plaintiffs (Petitioners here) anywhere in Township 2 South, Range 23 East; that said large expenditures of money, as particularly thereafter shown, resulted from illegal changes in the plans of reclamation, illegal construction contracts and other matters over which neither the Plaintiffs nor prior owners had any control. Yet common burdens resulting therefrom and from the putting out of the second bond issue and the third bond issue were spread over the lands of the Plaintiffs (Petitioners here) by annual tax levies from year to year, all (R. 28)

> "with the result that these plaintiffs have been deprived of their said properties without due process of law and without equal protection of the laws, contrary to the due process and equal protection clauses of the State and Federal Constitutions."

It is a well-settled rule that only those injured by an unconstitutional statute or an unconstitutional application of a statute may complain. The allegations last above referred to are applications of that rule. The injurious effects of the application so made of the statute are further elaborated in Section XII of the bill, beginning R. 54.

This Court, in many early leading cases, pointed out that the only constitutional justification for a special improvement district, such as a drainage district or an irrigation district, was a *common benefits* to all the lands within a given district, so as to make the several landowners in a sense co-tenants with respect to benefits in order to justify the spreading of *common burdens.* Such decisions of this Court are *Wurts* v. *Hoagland,* 114 U. S. 606; *Head* v. *Amoskeag,* 113 U. S. 9; *Fallbrook Irr. Dist.* v. *Bradley,*

163 U. S. 112, 163, and *Ocean-Beach Heights* v. *Brown-Crummer Invest. Co.*, 302 U. S. 614. In *Hagar* v. *Reclamation District*, 111 U. S. 701, Mr. Justice Fields, quoting and applying *Louisiana* v. *Pillsbury*, 105 U. S. 278, laid down the following rule applicable to drainage or reclamation districts:

> "The rule that he who reaps the benefit should bear the burden must in such cases be applied."

The question now under discussion is one concerning fundamental rights of the Petitioners. The presumption of non-waiver exists under the rule stated in *Johnson* v. *Zerbst*, supra. The making of numerous protests by owners in the Western watershed is actually set forth in detail in Section XIV of the bill (R. 64). The lack of any notice or hearing and the lack of any opportunity to be heard with respect to the very great changes in the plans of reclamation that occurred in February 1918 are set forth in Section XII of the bill (R. 54). The injury of spreading common burdens for moneys spent in other watersheds and for bond issues in an effort to construct drainage improvements in other watersheds, wholly without benefit to the lands of Petitioners, is continuing from year to year and will continue unless injunctive relief is granted. Section XVI of the bill (R. 74) expressly avers that the position of the Drainage District and its bondholders has not changed and has not been harmed by any act or omission to act on the part of these Petitioners. The majority opinion of the Supreme Court of Florida said nothing about the Federal question last above stated and undertook to dispose of the case on the ground of supposed acquiescence on the part of former owners, but, as previously pointed out, such resort to such supposed non-Federal ground for deciding the case was without "fair or substantial support", as applied to the facts and circumstances

pleaded in this case and admitted by the attacking motions.

4. Do the facts well pleaded in sections VIIII, XII and XIII and related sections of the bill show that the district supervisors have from year to year confiscated petitioners' properties without any hearing and without any opportunity for hearing to petitioners or their predecessors in title, all contrary to the due process clause and equal protection clauses of the fourteenth amendment?

Section VIII of the bill (R. 33) shows the arbitrary, capricious and confiscatory character of the assessments of benefits originally reported by the Commissioners in August, 1916. Section VII of the bill (R. 29) shows that after public notice those assessments were confirmed by court order of October 4, 1916, but that section of the bill by the order copied (R. 32) shows that the assessments were confirmed on the basis of the reported and contemplated benefits

> "accruing to all lands in said Baldwin Drainage District by reason of the execution of the plan of reclamation aforesaid."

Section XII of the bill (R. 54) shows material amendments to the decree creating the district, except for taxation purposes only, and material amendments to the plans of reclamation but without any notice, without any hearing and without any authority from the court, as required by Sections 39 and 46 of Chapter 6458, Laws of Florida 1913, which, as amended by Act of 1917, now appear as Sections 1491 and 1500 C. G. L. of Florida, and appear as Sections 298.07 and 298.27 Florida Statutes Annotated 1941. Section XII of the bill also shows that there was no pretense of any reassessments of benefits as required by the statutes

last cited, nor was there any court confirmation of such reassessments of benefits after such changes in the original decree and in the original plans of reclamation. Nevertheless, the Supervisors continued to use the old assessments of benefits reported in August, 1916, as the basis for levying annual installment taxes for bond service and annual pretended maintenance taxes beginning in 1924. The result was that there was never any assessments of benefits as applied to the changed decree and changed plans of reclamation and there was never any public hearing with respect thereto and there was never any court confirmation of such reassessed benefits. Therefore, as applied to the situation created by the resolution of the Board of Supervisors on February 13, 1918, undertaking to make such changes, the assessments of benefits complained of in Section VIII of the bill (R. 33) are still unreported and still unconfirmed by any court order and are open to all the attacks levelled against the same in Section VIII of the bill.

First of all, it is shown by that section that the Commissioners failed in many respects to perform their duties, as required by law. They did not view the premises. They made up an office report after collaboration with the District Engineer. They did not obey what is now Section 1463 Compiled General Laws, that is to say, they failed to assess such benefits as would accrue to each governmental lot, etc.,

> "from a carrying out and putting into effect the plan of reclamation theretofore adopted."

They proceeded to apply an arbitrary formula which assumed that no acre of land in the Drainage District would receive less than a minimum benefit of $25.00 and that no acre of land in the district would receive a benefit of more than $40.00, and then they pretended to make variations

between those two limits according to whether the land from the engineer's report appeared to be in a swampy area or a ridge area. Their distribution of assessments ranging from $25.00 per acre to $40.00 per acre was exemplified by the Township Plat for Petitioners' watershed—Exhibit 7 of the bill.

Section VIII of the bill contains many illustrations of the arbitrary and capricious character of the assessments, such, for example, as shown (R. 37 and R. 38 and 42) with respect to Sections 4, 5 and 6 of Petitioners' watershed. As to those three sections, it is pointed out there was to be one small ditch for each discharging into a dead-end on the boundary of the district at a cost for each ditch of $554.00, and yet the pretended assessments of benefits for each of these sections was over $21,000.00, more than *forty times* the contemplated cost of the ditch for each such section. To make it still worse, the changes aforesaid by the Supervisors on February 13, 1918, and exemplified by the map—Exhibit 8 to the bill, called for the entire elimination of those three small ditches, and this fact is set forth in Section XII of the bill. That left those three entire sections outside of the district for all purposes except taxation purposes, and yet the Supervisors from that time forward up to the present continued to use the amounts of the assessed benefits stated in Section VIII of the bill (R. 37) and shown on the Township Plat, Exhibit 7, for those three sections, as the basis for annual levies of 18 mills for debt service and 4 mills for pretended maintenance. In the concluding part of Section VIII of the bill (R. 43) it is alleged that:

> "* * * said pretended assessments of benefits cannot be justified from any standpoint of law or fact and yet the supposed Supervisors of the District have since the attempted confirmation of said assessments continously used the same as the basis for applying each and every attempted levy for payment of said bonds

and for maintenance purposes, with the result that each and every levy so made up to and including the levy for 1942 has operated to deprive these plaintiffs of their said properties without due process of law and without equal protection of the laws, contrary to due process and equal protection clauses of the State and Federal Constitutions."

The nature of the changes in the original decree and in the plans of reclamation are fully set forth in Sections XII of the bill, beginning R. 54. That section first exemplifies what was the original plan of reclamation by Exhibit 4 attached thereto, which shows the location and number of the proposed ditches. Exhibit 7-A of the bill mentioned in Section VIII (shown as Exhibit 3, R. 79) shows the profile and contemplated cost for each of the ditches in the Western watershed, as contemplated by the plan for that watershed shown on Exhibit 4 (R. 80). In the right-hand column of Exhibit 7-A is tabulated the aggregate assessed benefits for each Section in that watershed and put there for purposes of comparison with the estimated cost of the drainage ditch or works for each Section.

Section XII of the bill further exemplifies the three maps proposed by the Engineers in November, 1917, and later February, 1918, adopted as the revised and amended plans of reclamation for the three Townships of the District. Copies of those maps are shown as Exhibits 8, 9 and 10 of the bill (R. 82, 83, 84). The nature of the eliminations and changes are then briefly described in the bill as also shown by the tables appearing on the left-hand side of each map. It is next shown (R. 56) that the Supervisors on February 13, 1918, passed a resolution undertaking to adopt said revised plans and amendments and, thereafter, they made a new construction contract without competitive bidding and contrary to the statute for further work to be done pursuant to said changed plans, particularly on the "C" system of canals exemplified by Exhibit 9. It is then

alleged (R. 57) that all these changes and amendments in the plans of reclamation were so great and material they could not have been lawfully made without complying with Sections 1491 and 1500, Compiled General Laws. The material parts of those Sections are then pointed out and partially quoted. Those Sections of the law, in substance, required that when said changes were made the same procedure had to be gone through as that provided for the organization of a drainage district in the first instance. It was necessary for the Supervisors to file a petition with the court to authorize the desired changes; thereupon, new Commissioners had to be appointed to reassess benefits. When they made a report, a new published notice had to be given for the confirmation of the reassessed benefits and then a court order approving the same, if the showing warranted such order; but none of these things were done and no notice whatsoever for a hearing was given and no hearing permitted. The statute, by the requirements of Sections 1491 and 1500 Compiled General Laws, undertook to assure to property owners due process of law as guaranteed by the Fourteenth Amendment. After the changes were made, one McCarthy, a banker, procured a further cost-plus contract without competitive bidding by virtue of his money control of the Supervisors. All this is set up in Section XI of the bill, beginning R. 51, and, thereupon, he spent in other watersheds, than that of the Petitioners, the remainder of the first bond issue of $300,000.00 and caused two other bond issues to be put out by the Supervisors, the second for $150,000.00 and the third for $110,000.00. It is further shown by Section XII of the bill (R. 57-58) that the Supervisors falsified their records in order to put out said bond issues without any authority of the court and without any notice to the public, as required by the statute, and those two bond issues were never confirmed by any validation order of the court so that the

property owners had no opportunity to make any fight against the validity of those two bond issues. Concluding such a history of the changes and what followed in the wake thereof, Section XII of the bill (R. 59) said:

> "Plaintiffs further say that notwithstanding all the aforesaid unauthorized changes and amendments to said plan of reclamation and notwithstanding the unauthorized issuance of the second and third bond issues the Supervisors from 1918 to 1942 inclusive annually undertook to levy instalment taxes based upon the original assessments of benefits made and reported by the Commissioners August 29th, 1916, as aforesaid."

Section XIII of the bill (R. 59) points out that beginning in 1922 down to date the Supervisors made only aggregate levies of installment taxes for all of the three bond issues, including the second and third illegally put out in the manner set forth in Section XII of the bill, and that the assessment books turned in to the County Tax Collector called for aggregate collections. It is then further alleged in Section XIII (R. 62):

> "Plaintiffs now further say that no part of the moneys arising from said second bond issue or said third bond issue was ever expended or used in the Deep Creek-St. Marys River watershed where plaintiffs' lands are situated as aforesaid."

Again on the following page (R. 63) it is alleged:

> "Plaintiffs now further aver that not a dollar of the moneys so spent or wasted on said "C" system of canals under said illegal contract and under illegal bonds issued therefor ever benefitted the lands of the plaintiffs in the western township one iota and it was not possible for plaintiffs' lands to receive any benefit therefrom due to the fact that the plaintiffs' lands were in a separate and distinct watershed and non-contiguous in the many respects set forth in Section VI of this bill * * *"

Then Section XIII of the bill (R. 63) concludes with the following language:

> "The plaintiffs now say that such an application of the general drainage law as shown by the aforesaid facts operated to take the properties of the plaintiffs situated in said western watershed contrary to the due process clauses and equal protection clauses of the State and Federal Constitutions. That if said Chapter 6548, Acts of 1913, by its terms warranted such application of the law then these plaintiffs say that the Statute itself is unconstitutional for the reasons last above stated."

The majority opinion of the Florida Supreme Court gave no heed whatsoever to the subject matter of Sections VIII, XII and XIII of the bill, as above explained. That opinion also failed to take any notice of the lack of hearing to property owners concerning the changes made in the original decree and plans of reclamation and failed to take any notice of the lack of any opportunity for hearing or of the actual falsification of records to prevent notice and hearing and yet the conclusion of the court was that the bill must be dismissed because of "acquiescence on the part of those who could have protested".

As applied to such a situation, we contend that the rules laid down in *Browning* v. *Hooper*, 269, U. S. 396, and *Chesebro* v. *Los Angeles, etc. District*, 306 U. S. 459, are applicable. In *Browning* v. *Hooper* the following rule was stated in the sixth headnote (70 L. Ed. text 331):

> "6. Where a road improvement district is created by mere petition of taxpayers, and there was no legislative determination that any included property would be benefitted by the improvement, notice to property owners and an opportunity to be heard are essential to due process of law in the taxing of the assessment."

The same rule was adhered to in the *Chesebro* case, 306 U. S. text 464, 83 L. Ed. text 926.

The case of *Risty* v. *Chicago R. I. & P. R. Co.*, 270 U. S. 378, 389, 70 L. Ed. 642, 651, is very pertinent. The ninth headnote of this case (L. Ed.) reads:

> "9. Nonaction by persons owning lands outside a drainage district while proceedings to repair the ditch are in progress does not estop them from contesting an assessment against their property where they could have had no notice of the proposal to assess their lands until publication of notice of the apportionment of benefits."

So here no estoppel or acquiescence could operate against Petitioners or former owners when the Supervisors falsified their records to avoid complying with what are now Sections 1491 and 1500 Compiled General Laws of Florida.

In *Buffum* v. *Peter Barceloux Co.*, 289 U. S. 227, 72 L. Ed. 1140 (third headnote—L. Ed.) it was held:

> "One who acted in ignorance of the facts is not irrevocably estopped by his act."

To like effect is *Johnson* v. *Zerbst*, 304 U. S. 458, *supra*.

5. WHEN IT APPEARS BY SECTION XIV OF THE BILL, (R. 64 AND OTHERWISE), THAT THE DRAINAGE DISTRICT NEVER PUT INTO EFFECT ANY PART OF THE DRAINAGE WORKS AND WHOLLY ABANDONED MANY MATERIAL PARTS OF THE PLANS DESIGNED TO BENEFIT PETITIONERS' PROPERTIES, LEAVING THEIR PROPERTIES IN THE SAME OR WORSE CONDITION THAN BEFORE, WAS IT AND IS IT CONSISTENT WITH DUE PROCESS AND EQUAL PROTECTION OF THE LAWS TO CONTINUE THE IMPOSITION OF DRAINAGE TAX BURDENS ON PETITIONERS' LANDS FOR THE LIQUIDATION OF NON-NEGOTIABLE AND UNCONFIRMED BOND ISSUES FOR MONEY WASTED UNDER ILLEGAL CONTRACTS IN OTHER WATERSHEDS?

Section XIV of the bill, beginning R. 64, tells the principal story in answer to this question. It is pointed out that property owners in Petitioners' watershed began making protest of flood conditions from what drainage im-

provements had been constructed in that watershed as early as October 7, 1918, which was only a few days after Wills & Son and McCarthy had obtained their cost-plus contract for further construction in other parts of the District, as set up in Section XI of the bill, beginning R. 51. Such protests began also before the second or third bond issue was put out for moneys wasted in other watersheds. The Supervisors passed a resolution October 8, 1918, providing that Section 6 in Petitioners' watershed would not be burdened with any more drainage taxes due to the flooding thereof. Again, on March 27, 1919, further complaints were made of the ineffectiveness of what had been done in Plaintiffs' watershed. Again, on April 15, 1920, (R. 65) further protests were made and resolutions passed by the Supervisors recognizing the ineffectiveness of the works in that watershed and recognizing that some four thousand acres of land (principally now owned by Macclenny Turpentine Company) had been flooded and not benefited. The flooding of that area was mentioned in the case of *Duval Cattle Company* v. *Hemphill*, 41 Fed. (2d) text 436, although that area was not involved in the Duval Cattle Company suit. Then, again, on October 7, 1923, the situation was further reviewed by the Supervisors as per their Minutes quoted in the bill (R. 66), but no relief was given. Shortly thereafter the District proved to be insolvent and a Receiver was appointed by the Federal Court in May, 1924, which receivership also proved to be a failure and, after it had continued for a period of about ten years, the Federal Court discharged the Receiver and dismissed all undisposed of tax foreclosure suits. While the receivership was in progress, the Supervisors employed one George W. Simons, Jr., to make a careful survey of all of the drainage works in the District in order to know what actually existed and the condition thereof. Mr. Simons made his report, as per Exhibit 11 to the bill, and he presented maps in connection with his report as per

Exhibit 12 to the bill. Those maps of Simons, Exhibit 12, (R. 90-A) showed all of the eliminations proposed by the Engineers as per Exhibits 8, 9 and 10 of the bill and many more in addition, including the total abandonment of Section 19 of Township 2 South, Range 23, now owned by Macclenny Turpentine Company, and including a partial abandonment of Sections 2 and 3 of the same Township; also Section 24, now owned by the Plaintiff, Mrs. Bostwick. Simon's report also showed the very great change in the "C" system of canals as first exemplified by Exhibit 9 to the bill. His report pointed out that the "C" system was an utter failure and stopped at a dead-end about one thousand feet from the Northern boundary of the District after having been changed so as to divert water from some five or six Sections of land South of the Seaboard Railroad Northward through the "C" system rather than Eastward into McGirt's Creek on the Eastern boundary of the District. Section XIV of the bill concludes by charging that the District was under a continuing obligation to carry out and put into effect an effective system of drainage before the property owners were obligated to pay any taxes and that to keep their properties in the District and to continue levying taxes thereon was contrary to the principles enunciated in prior decisions of the Supreme Court of Florida such as *Cosby* v. *Jumper Creek Drainage Dist.*, 3 So. (2d) 356, and cases from other States. The Supreme Court of Florida, however, in this case gave no heed to such showing of facts, all admitted by the attacking motions, and directed the bill to be dismissed in its entirety.

We believe the rule announced by this Court in *Myles Salt Co.* v. *Board of Commissioners*, 239 U. S. 478, 60 L. Ed. 393, first headnote reading as follows, is applicable:

> "1. The contention that a state law as administered and justified by the highest court of the state violates the Federal Constitution presents a Federal question

> which will support a writ of error from the Federal Supreme Court to the state court, although the state law as written is not attacked."

In the *Myles* case the island owned by the Salt Company was initially put in the District for taxation purposes only, whereas here the lands now owned by the Petitioners were kept in the District purely for taxation purposes only and those taxes are sought to be collected to liquidate obligations created for moneys wasted and paid out to a banker-contractor under an illegal contract for works in other watersheds wholly unrelated to the watershed in which the Plaintiffs' lands were situated. See also *Georgia R. & E. Co.* v. *Decatur*, 295 U. S. 165, 79 L. Ed. 1365, last headnote.

6. WAS IT OR IS IT CONSISTENT WITH DUE PROCESS AND EQUAL PROTECTION OF THE LAWS GUARANTEED BY THE FOURTEENTH AMENDMENT TO LEVY AND CONTINUE TO LEVY ANNUAL MAINTENANCE TAXES AGAINST THE LANDS OF PETITIONERS:

(A) WHEN NO ORIGINAL CONSTRUCTION WAS EVER PUT INTO EFFECT;

(B) WHEN MANY AREAS OF PETITIONERS' LANDS WERE WHOLLY ABANDONED;

(C) WHEN MANY AREAS OF PETITIONERS' LANDS WERE DAMAGED BY FLOODING AND NEVER BENEFITED;

(D) WHEN THERE NEVER WAS ANY PRETENSE OF MAINTENANCE IN THE DISTRICT;

(E) WHEN SUCH PRETENDED MAINTENANCE TAXES AS WERE COLLECTED DURING THE PERIOD OF THE FEDERAL RECEIVERSHIP WERE DIVERTED TO THE PAYMENT OF ATTORNEYS' FEES AND COURT COSTS IN THE PROSECUTION OF DELINQUENT TAX SUITS AGAINST OTHER LANDS?

Section XV of the bill (R. 69) tells the story about the levy of pretended maintenance taxes beginning in 1924, the same year that the Federal Receiver was appointed. The

construction work in the District stopped about September 1920. From then until the appointment of the Receiver no pretense of maintenance was made. Beginning in 1924, the Supervisors started levying 4 mills per annum on the amounts of supposed benefits originally assessed and reported by the Commissioners in August, 1916, that is to say, as to lands where benefits were assessed and reported up to $40.00 per acre, there was annually assessed 16 cents per acre per year for supposed maintenance. This continued through 1930, at which time the maintenance levies dropped down to 3 mills per annum on the original amounts of the assessed benefits. Section XV of the bill points out many reasons why the maintenance taxes were wholly void, including those summarized in the question last above, and the concluding sentence of Section XV (R. 74) asserts that such levies of maintenance taxes

> "for said insolvent and defunct district, were wholly arbitrary, and amounted to a spoliation of plaintiffs' properties."

That conclusion is borne out by the facts pleaded in Sections XII and XIV of the bill previously analyzed. We need not refer to the showing made in those two sections beyond again calling attention to the fact that, as appears by Exhibit 8 adopted by the Supervisors in their resolution of February 13, 1918, the ditches contemplated for Sections 4, 5 and 6 were wholly abandoned and, as appears by the Simons' map—Exhibit 12 to the bill—no ditches were ever dug in those three sections nor was any ditch dug in Section 19 and those which were dug in Sections 2 and 3 were short and stopped at a dead-end. In all such areas there was never any original construction much less any maintenance; besides, the four thousand acres mentioned in Section XIV of the bill (R. 66), chiefly belonging to Petitioners, was annually flooded and damaged with no

pretense of maintenance at any time since any ditches were dug, and yet the Supreme Court of Florida ruled that the bill in its entirety, including the attack upon such maintenance taxes for the past and for the future, must be dismissed.

Section XV of the bill did not specifically invoke the protection of the due process and equal protection clauses of the Fourteenth Amendment, but, in order to leave no doubt on that subject, several of the grounds embraced in the petition for rehearing specifically raised that question as to the maintenance taxes.

We now call attention to grounds 8, 9, 10 and 11 of the petition for rehearing (R. 135). Each of those grounds begins with the language

> "Is it consistent with due process and equal protection of the laws"

to impose maintenance taxes under specified conditions referred to in each of said grounds. The record shows that on May 17, 1944, the Court granted the petition for rehearing in part and ordered oral argument thereon for June 13, 1944; therefore, the petition for rehearing containing said grounds 8, 9, 10 and 11 became part of the record made before the Supreme Court of Florida and may be resorted to for the purpose of showing that the Federal question was presented to the Supreme Court of Florida. After having granted in part that petition for rehearing, the Court finally denied the same on August 1, 1944, and reaffirmed the prior opinion and judgment handed down April 4, 1944.

Section XVI of the bill (R. 74) shows that the District has continued to be insolvent and is now dominated and controlled by the two bondholders who claim to own $520,000.00 of its bonds out of a total of $560,000.00, and that they bought their bonds at five to ten cents on the dollar

beginning in the year 1937 after a majority of the bonds were past due and all of the matured coupons in default. All of these matters are admitted by the attacking motions and, therefore, there cannot be any possible lawful basis for either past or future levies of maintenance taxes, none of which would go to the now controlling bondholders. The past and continuing levies of maintenance taxes under the facts shown by this bill are the plainest sort of spoliation of property.

> *Myles Salt Co.* v. *Board of Commissioners,* 239 U. S. 478, 485, 60 L. Ed. 392, 396, last paragraph of the opinion.

As above noted, the opinion which the Supreme Court of Florida adheres to in this case was rendered April 4, 1944, but, on May 9, 1944, rehearing denied June 2, 1944, the Court decided the case of *Smith* v. *City of Winter Haven,* now reported in 18 So. (2d) page 4, and in that case the Court had the following to say in response to the City's contention that the property owner was estopped by past acquiescence from having a cancellation of past taxes and an injunction against future levies:

> "A municipality's power to tax for benefits is not bounded by its cosmic ambition or the superlative inducements of its chamber of commerce but by its present or reasonably present capacity to replace the taxes exacted with a commensurate benefit. *When the relation between the taxes exacted and benefits conferred is not apparent, there is no basis whatever to support the tax.* The fact that one on whom an unlawful tax is imposed pays it over a period of years before he 'squeals' might be evidence that his family tree had its genesis in the loins of the stoics but it certainly would not be a peg on which to hang estoppel. It would be more logical to contend that appellants were entitled to recoupment. *Persons adversely affected by it*

> *may raise the defense of laches but it certainly could not be available to those who are unjustly enriched by it.*" (Italics ours.)

This decision is entirely inconsistent with the acquiescence theory put forth by the majority opinion in the case at bar. As applied to the enforcement of past maintenance taxes or future maintenance taxes for this District, the logic of the Smith case certainly should be applied if the Petitioners are to have the protection to which they are entitled under the Fourteenth Amendment.

The continued annual levies of installment drainage taxes for debt service purposes and of pretended maintenance taxes, when there is no maintenance and was never any original effective construction, amounts to continued and recurring trespass and infringement upon the Petitioners' properties, severally. Under these circumstances, the situation is not unlike that which obtains where the owner of a patent infringed upon permits, such infringement to continue for a considerable period of time, and then invokes injunctive relief to prevent further infringement. In such case, the rules were stated by this Court in *Menendez, etc.*, v. *Holt*, 128 U. S. 514, 32 L. Ed. 526, as follows:

> "Mere delay or acquiescence by the owner cannot defeat the remedy by injunction in support of the legal right, unless it has been continued so long and under such circumstances as to defeat the right itself."
>
> * * * * * * *
>
> "Where there is no pretense of abandonment, delay in bringing suit may preclude recovery of damages for prior infringement, but will not destroy the right to prevention of further injury."

The Petitioners here are not asking for any accounting and return of drainage taxes previously paid. They are demanding relief against illegal taxes heretofore levied but

still unpaid and they are demanding relief against future levies of the same character. Therefore, the rules quoted from the Menendez case should apply.

Reasons Relied Upon for Allowance of Writ of Certiorari.

A. The rule of privity between State tax title grantees and former owners announced by the majority opinion of the Supreme Court in this case is in conflict with prior decisions of the Supreme Court of Florida in such cases as *Stuart* v. *Stephanus,* 94 Fla. 1087, 114 So. 767, *supra,* and in conflict with the decisions of this Court in *Hussman* v. *Durham,* 165 U. S. 148, *supra.* Moreover, the rule of property so changed by the opinion complained of impairs the tax title grants of Petitioners and all other tax titles granted to properties situated in Drainage Districts of the State of Florida.

B. The Florida Supreme Court's use of assumption and conjecture in arriving at the conclusion of acquiescence on the part of former owners sufficient to bar Petitioners of any right to be heard on the merits of the well-pleaded allegations of their bill was a violation of the due process clause of the Fourteenth Amendment contrary to principles enunciated by this Court in *Ohio Bell Tel. Co.* v. *Public Utilities Commission,* 301 U. S. 302, 306, 307, *supra,* and *Johnson* v. *Zerbst,* 304 U. S. 458, *supra.*

C. The majority opinion of the Supreme Court of Florida, by upholding the validity of Chapter 6458, Laws of Florida 1913, as applied to the inclusion of four separate and distinct watersheds in one Drainage District and as applied to the spreading of common burdens upon the lands of the Petitioners in the Western watershed without common benefits, put said statute in conflict with the due process and equal protection clauses of the Fourteenth

Amendment and in conflict with many decisions of this Court such as *Head* v. *Amoskeag*, 113 U. S. 9, *supra; Wurtz* v. *Hoagland*, 114 U. S. 606, *supra; Hagar* v. *Reclamation District*, 111 U. S. 701, *supra; Ocean Beach Heights* v. *Brown-Crummer Inv. Co.* 302 U. S. 614, *supra*, and in conflict with Missouri decisions construing the drainage law of that State, from which the drainage law of Florida was largely copied. *Mound City Land & S. Co.* v. *Miller* (Mo.), 70 S. W. 721, 60 L. R. A. 190, 200, 208; *Elsberry Dist.* v. *Harris* (Mo.), 184 S. W. 89, 92; *Duncan* v. *St. Johns Levee & D. Dist.*, 69 Fed. (2d) 342 (8 C. C. A.).

D. The Petitioners who are tax title owners, and the Petitioners and their predecessors who were non-tax title owners, have never had their day in court nor any opportunity therefor, as applied to the assessments of benefits used as a basis for taxes levied against their lands, severally, after the changes and amendments to the original decree and to the plans of reclamation complained of in Sections XII and XIII of the bill. The Supreme Court of Florida, in effect, denied their right to such day in court. Such application of the statute by the Supervisors and by the Supreme Court of Florida deprives Petitioners of their properties without due process and without equal protection of the laws secured by the Fourteenth Amendment and enunciated in such decisions of this Court as *Browning* v. *Hooper*, 269 U. S. 396, *supra; Chesebro* v. *Los Angeles, etc., District*, 306 U. S. 459, *supra*. The position so taken by the Supreme Court of Florida last above mentioned is also in conflict with the decision of the Fifth Circuit Court of Appeals in the *Florida* case of *Ecker* v. *Southwest Tampa Storm Sewer D. Dist.*, 75 Fed. (2d) 870, and in conflict with decisions of other State Supreme Courts on this question. *Armistead* v. *Southworth* (Miss.), 104 So. 94, first and second headnotes, and *Thomas* v. *Dallas County*

Levee Imp. Dist. (Tex.), 23 S. W. (2d) 325, third headnote, and *Kelleher* v. *Joint Drainage Dist.* (Iowa), 249 N. W. 401.

E. The decision of the Supreme Court of Florida, by sustaining all the drainage tax levies of the past and by refusing any injunctive relief as to the future, notwithstanding the complete abandonment of all proposed drainage improvements in large areas of the Petitioners' lands and notwithstanding damage by flooding and no benefit whatsoever to other large areas of Petitioners' lands, has authorized the taking of Petitioners' properties without due process and without equal protection contrary to the Fourteenth Amendment and contrary to such decisions of this Court and of other courts as *Myles Salt Co.* v. *Board of Commissioners*, 239 U. S. 478, *supra; Huey* v. *Bd. of Drainage Commissioners* (Ky.) 15 S. W. (2d) 451; *Whitcher* v. *Bonneville Irr. Dist.* (Utah), 256 Pac. 785; *Smith* v. *Enterprise Irr. Dist.* (Ore.), 85 Pac. (2d) 1021.

F. The decision of the Supreme Court of Florida sustaining pretended maintenance taxes past and future, notwithstanding all of the well pleaded facts set forth in Sections XIV and XV of the bill, is contrary to the Fourteenth Amendment and contrary to the late decision of the Florida Supreme Court itself in *Smith* v. *City of Winter Haven*, 18 So. (2d) 4, *supra*, and contrary to *Johnson* v. *Zerbst*, 304 U. S. 458, *supra*.

G. The majority opinion of the Supreme Court of Florida entirely misconstrues and misapplies the decision of this Court in *Tulare Irr. Dist.* v. *Shepard*, 185 U. S. 1, and if such misconstruction and misapplication of this Court's decision is not corrected much injustice and injury will follow in the wake thereof in the determination of subsequent similar controversies by the Courts of Florida.

II. If the denial of Federal rights complained of in this petition is not corrected by this Court, then all properties situated in the Baldwin Drainage District and other numerous drainage districts in the State of Florida in like situation will continue to be dead properties unproductive of tax revenues to support the State, county and school governments and with no substantial value to any property owner in such districts. On account of these aspects this case is of large public importance in the State of Florida.

I. The United States District Court for the Southern District of Florida, Jacksonville, Division is now awaiting this Court's decision of this case before said District Court makes distributions of the large sums of money now in the registry of the court awarded for lands taken for airfield purposes in six or seven condemnation suits covering lands in the Baldwin Drainage District. If the decision of the Supreme Court of Florida stands uncorrected then the Baldwin Drainage District or rather the two defendant bondholders in this case will get practically the total of all the awards made in all those condemnation cases, and property owners will get practically nothing because the accumulated claims for drainage taxes made by the Drainage District amounted in most instances to several times the value of the lands as awarded by the juries in said several condemnation cases. If injustice was done by the decision of the Supreme Court of Florida in this case, that injustice will immediately be multiplied many times in said condemnation cases because said District Court deems itself bound by the determinations of the Supreme Court of Florida in dealing with questions of State law applicable to said Drainage District.

Wherefore, your Petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this

Honorable Court directed to the Supreme Court of Florida commanding that court to certify and send to this Court for its review and determination on a day certain to be named therein a full and complete transcript of the record and all proceedings had in this cause and that the judgment and decree of said Supreme Court of Florida in this cause be reversed by this Court and that the Petitioners may have such other and further relief in the premises as to this Court may seem just.

THOS. B. ADAMS,
1006 Bisbee Building,
Jacksonville, Florida,
Counsel for Petitioners.